

## REMARKS

The Notice mailed February 25, 2005, states that the Response filed on December 9, 2004 is not in compliance with 37 CFR § 1.121. In accordance with 37 CFR § 1.121, Applicant submits this Response containing Applicants election a single species. In view of the Supplemental Response filed herein, Applicant respectfully submits that all objections to the claims have been overcome.

According to the Office Action, Applicants previous election of *hepatitis* is non-compliant because claim 16 allegedly claims that hepatitis can be caused by more than one viral species, and thus Applicants are required to elect a single virus or species.

Although Applicants traverse the requirement to elect a species for the reasons set forth below, in order to be fully responsive to the Action, Applicants elect the species hepatitis C virus, or HCV, as set forth in claim 16 belonging to elected Group II (drawn to method of detecting liver damage by detecting enzymatic activity of kallikrein-like peptidase, classified in class 435 subclass 4). It is noted that claims 1-3, 5-19 and 25-46 are readable on the elected species.

The requirement to elect a species is traversed generally with respect to all species within claim 16 of Group II as set forth above in the Office action. Applicants submit that, while the species of viruses as set forth in claim 16 are independent and patentably distinct, they all share a commonality with respect to the claimed methods. Claim 16 further defines the invention (elected Group II) and are not species *per se* because the different viral species causing liver damage or hepatitis are not restricted to a single disclosed embodiment. That is, the different viral species of claim 16 have a commonality of operation, function or effect. (MPEP § 806.04(e)), and this is not effected by the method of detection as provided by the invention.

For example, the non-elected viruses, including hepatitis A and B or other hepatitis viruses, cause liver damage or hepatitis, and are capable of detection by kallikrein or kallikrein-like enzymatic

In re Application of:

Hugli, et al.

Application No.: 09/922,236

Filed: August 2, 2001

Page 3

PATENT

Attorney Docket No.: SCRIP1460

activity; which is the invention of elected Group II. Since the non-elected species (viruses) share a commonality of operation, function and effect with the elected hepatitis C virus, it is submitted that the detection of the liver damage or disease by kallikrein or kallikrein-like enzymatic assay is common to all of the viral species. Therefore, the species should not be restricted and that the viruses set forth in claim 16 of elected Groups II should be examined together.

Accordingly, it is respectfully requested that the Examiner reconsider this election requirement and rejoin the hepatitis causing viruses of claim 16, of elected Group II. It is further submitted that the claims are in condition for examination on their merits and that such is respectfully requested.

In re Application of:  
Hugli, et al.  
Application No.: 09/922,236  
Filed: August 2, 2001  
Page 4

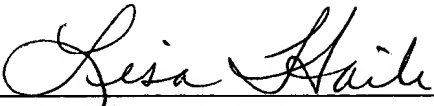
PATENT  
Attorney Docket No.: SCRIP1460

The Examiner is invited to contact Applicants' undersigned representative if there are any questions relating to this application.

If any fee is required, the Commissioner is authorized to charge any fee (or credit any overpayment) to Deposit Acct. No. 07-1896.

Respectfully submitted,

Dated: March 24, 2005

  
\_\_\_\_\_  
Lisa A. Haile, J.D., Ph.D.  
Reg. No. 38,347  
Telephone: (858) 677-1456  
Facsimile: (858) 677-1465

DLA PIPER RUDNICK GRAY CARY US LLP  
4365 Executive Drive, Suite 1100  
San Diego, CA 92121-2133  
**USPTO CUSTOMER NO. 28213**